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EXAMINER
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GOTTSCHALK, MARTIN A

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/970,161

Filing Date: October 02, 2001

Appellant(s): WAHLBIN ET AL.

\_\_\_\_\_  
Eric B. Meyertons  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 21 May 2007 appealing from the Office  
action mailed 09/15/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

The following copending applications, all filed October 2, 2001, are currently under appeal to the Board of Patent Appeals and Interferences:

Application numbers 09/969,545; 09/969,546; 09/969,015; 09/969,022; 09/969,024; and 09/969,146.

Examiner substantially agrees, as of September 25, 2007, with the list of copending appeals presented in the Appeal Brief, with the following exceptions:

- Examiner notes that although it is listed in the Appeal Brief as "currently under appeal," copending application numbers 09/969,027, and 09/969,536 filed October 2, 2001, have had prosecution reopened, and are no longer currently under appeal to the board of Patent Appeals and Interferences;
- Examiner notes that copending application 09/969,024, and not listed in the Appeal Brief now contains a Notice of Appeal filed on August 24, 2007, and is consequently currently under appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

**NEW GROUND(S) OF REJECTION**

***Claim Rejections - 35 USC § 101***

1. 135 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 801 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim recites in the preamble "A carrier

medium." Page 17 of the specification (also paragraph [0102] of PG Pub# 2002/0062235) indicates a carrier medium is to include electrical, electromagnetic, or digital signals, which is not statutory. See *In re Nuijten*, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007) (slip. op. at 18) ("A transitory, propagating signal like Nuijten's is not a 'process, machine, manufacture, or composition of matter.' ... Thus, such a signal cannot be patentable subject matter.").

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

5950169	Borghesi	9-1999
6336096	Jernberg	01-2002
6223125	Hall	04-2001

Examiner's Official Notice

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following rejections are reproduced from the final rejection which is currently under appeal.

***Claim Rejections - 35 USC § 101***

1. 135 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 801 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim recites in the preamble "A carrier medium." Page 17 of the specification (also paragraph [0102] of PG Pub# 2002/0062235) indicates a carrier medium is to include electrical, electromagnetic, or digital signals, which is not statutory. See *In re Nuijten*, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007) (slip. op. at 18) ("A transitory, propagating signal like Nuijten's is not a 'process, machine, manufacture, or composition of matter.' ... Thus, such a signal cannot be patentable subject matter.").

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 753, 755-759, 761-763, 765-767, 769, 770, 776-779, 786, 787, 794, 800, 801, 849, 850, and 852 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borghesi (US Pat# 5,950,169) in view of Jernberg (US Pat# 6,336,096).

A. As per claim 753, Borghesi discloses a method, comprising:

providing claim data regarding a vehicle accident to a computer system via a graphical user interface (Borghesi: col 3, lns 5-11; col 4, ln 64 to col 5, ln 5);

providing data regarding at least one vehicle involved in the vehicle accident to the computer system via the graphical user interface (Borghesi: col 4, ln 64 to col 5, ln 5);

providing an assessment of the vehicle accident to the computer system via the graphical user interface (Borghesi: col 4, ln 64 to col 5, ln 25),

and

storing the claim data regarding the vehicle accident, the data regarding at least one vehicle involved in the vehicle accident, and the assessment of the vehicle accident in a memory associated with the computer system (Borghesi: col 5, ln 26-35).

Borghesi fails to disclose the remaining features of the claim, however, these features are well known in the art as evidenced by the teachings of Jernberg who teaches

the assessment of the accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident (Jernberg: col 3, lns 63-65);

displaying a consultation report via the graphical user interface, wherein displaying a consultation report comprises displaying the assessment of the liability of the insured party (Jernberg: col 6, lns 61-65; col 13, lns 44-47);

It would have been obvious at the time of the invention to incorporate the teachings of Borghesi with those of Jernberg with the motivation of evaluating liability among multiple parties and their insurers (Jernberg: col 2, lns 25-28).

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**Note:** In the claims that follow combining the teachings of Jernberg and Borghesi, the same motivation as provided above applies and will not be repeated.

B. As per claim 755, Borghesi discloses the method of claim 753, wherein the consultation report comprises

the claim data, the data regarding the at least one vehicle, and the assessment (Borghesi: col 4, ln 47 to col 5, ln 5).

C. As per claim 756, Borghesi discloses the method of claim 753, wherein the consultation report comprises

a range of liability for an insured party involved in the vehicle accident (Borghesi: col 9, lns 34-42, i.e. display of "inspection information" is a type of consultation report and range of liability reads on "policy information includes...type of coverage...deductible amount..."),

Borghesi fails to explicitly disclose

wherein the liability is a proportion of the total liability for the accident.

However this feature is well known as evidenced by Jernberg: col 3, lns 64-66.

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D. As per claim 757, Borghesi discloses the method of claim 753, wherein the claim data comprises

policy data (Borghesi: col 9, Ins 34-42, reads on "policy information includes...type of coverage...deductible amount...").

E. As per claim 758, Borghesi discloses the method of claim 753, wherein the claim data comprises

policy data,

and

wherein the policy data comprises a claim number, a policy number, policy limits, or policy dates (Borghesi: col 9, Ins 34-42, reads on "policy information includes...type of coverage...deductible amount...").

F. As per claim 759, Borghesi discloses the method of claim 753, wherein the claim data comprises

information regarding parties involved in the vehicle accident (Borghesi: col 4, Ins 47-63; col 9, Ins 43-50).

G. As per claim 761, Borghesi discloses the method of claim 759, wherein the parties comprise

one or more witnesses (Borghesi: col 4, Ins 47-63; col 9, Ins 43-50).

H. As per claim 762, Borghesi discloses the method of claim 759, wherein the information regarding the parties involved in the vehicle accident comprises

a description of the vehicle accident provided by at least one of the parties (Borghesi: col 4, Ins 47-63, reads on "...statements from those at the scene..."; col 9, Ins 43-50).

I. As per claim 763, Borghesi discloses the method of claim 753, wherein the claim data comprises

a location (Borghesi: col 4, Ins 47-63, reads on "...information that details the loss..." and "...statements from those at the scene..."), a date, and a time of the vehicle accident (Borghesi: col 9, Ins 47-50).

J. As per claim 765, Borghesi discloses the method of claim 753, wherein the claim data comprises

content of a police report regarding the vehicle accident (Borghesi: col 4, lns 47-63. The Examiner notes that the claim information provided in the cited passage would closely mirror the content of an associated police report.)

K. As per claim 766, Borghesi discloses the method of claim 753, wherein the claim data comprises

whether there were injuries in the vehicle accident (Borghesi: col 2, 50-52).

L. As per claim 767, Borghesi discloses the method of claim 753, wherein the claim data comprises

a jurisdiction in which the vehicle accident occurred (Borghesi: col 4, lns 47-63, reads on "...necessary information for field processing of insurance claims.").

M. As per claim 769, Borghesi discloses the method of claim 753, wherein the claim data comprises

a number of vehicles involved in the vehicle accident (Borghesi: col 4, lns 47-63, reads on "...necessary information for field processing of insurance claims.").

N. As per claim 770, Borghesi discloses the method of claim 753, wherein the data comprises

a type of the at least one vehicle involved in the vehicle accident (Borghesi: col 4, Ins 47-63, reads on "vehicle...year, make, model...").

O. As per claim 776, Borghesi discloses the method of claim 753, wherein the assessment of the vehicle accident comprises

an impact point of the at least one vehicle involved in the vehicle accident wherein the impact point is selected by the user (Borghesi: col 12, Ins 29-36, reads on "damage location"; col 13, Ins 1-15), wherein the proportion of liability of the insured party is at least partially based on the impact point (Borghesi: col 13, 15-20, i.e. the total liability for the repair will depend on the cost of the impacted part, and a more expensive part will represent a higher proportion of liability.).

P. As per claim 777, Borghesi discloses the method of claim 776, further comprising displaying a symbolic representation of the impact point selected by the user (Borghesi: col 12, Ins 29-36, reads on "illustration").

Q. As per claim 778, Borghesi discloses the method of claim 776, wherein the impact point is selected from the group consisting of

right front corner,

right front fender (Borghesi: col 12, lns 59-67, reads on "...main parts groups such as...fender...". The Examiner notes that a parts group involving a fender would include all of a cars possible fenders which would include the right front fender.)

right middle,

right rear quarter-panel,

right rear corner,

rear middle,

left rear corner,

left rear quarter-panel,

left middle,

left front fender,

left front corner,

and

front middle.

R. As per claim 779, Borghesi discloses the method of claim 753, wherein the assessment of the vehicle accident comprises

a description of the vehicle accident (Borghesi: col 4, lns 47-63, note "...statements from those at the scene...").

S. As per claim 786, Borghesi discloses the method of claim 753, wherein the assessment of the vehicle accident comprises

an assessment of a condition of the at least one vehicle involved in the accident (Borghesi: col 5, lns 11-15, reads on "damage estimate").

T. As per claim 787, Borghesi discloses the method of claim 786, wherein the condition comprises

defective equipment (Borghesi: col 5, lns 11-15, reads on "...repairs necessary to bring the vehicle back to its previous state.").

U. As per claim 794, Borghesi discloses the method of claim 753, wherein the assessment of the vehicle accident comprises

a determination of whether the at least one vehicle involved in the vehicle accident was defective (Borghesi: col 5, lns 11-15, reads on "...repairs necessary to bring the vehicle back to its previous state.").

V. As per claims 800 and 801, they are system and carrier medium with computer-executable program instruction claims respectively which repeat the same limitations of claims 753, the corresponding method claim, as a collection of elements and program instructions as opposed to a series of process steps. Since the teachings of Borghesi disclose the underlying process steps that constitute the methods of claims 753, it is respectfully submitted that they provide the underlying structural elements and program instructions that perform the steps as well. As such, the limitations of claims 800 and 801 are rejected for the same reasons given above for claims 753.

W. As per claim 849, Jernberg discloses the method of claim 753, wherein the assessment of liability of the insured party comprises

a base liability, and upper range a liability, and a lower range of liability

(Jernberg: col 4, lns 5-11).

X. As per claim 850, Borghesi discloses the method of claim 753, further comprising

displaying a graphical representation of at least one vehicle and a plurality of

impact points for the at least one vehicle, wherein the impact points are

selectable by a user;

and

receiving a selection by a user of one or more of the impact points corresponding

to the vehicle accident (for both steps, Borghesi: col 12, lns 14-36).

Y. As per claim 852, Borghesi fails to disclose the features of the claim, however this feature is well known by Jernberg who teaches the method of claim 753, wherein

the proportion is expressed as a percentage (Jernberg: col 4, lns 6-9).

6. Claims 772-775, 780, 782-785, 788-793 and 795, 796, 799, 845-847, and 851 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borghesi in view of Jernberg as applied to claim 753 and further in view of Hall (US Pat# 6,223,125).

A. As per claim 772, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

a symbolic representation of an accident type (Hall: col 7, lns 52-58; col 16, lns 8-10; Fig 6), wherein the accident type is selected by a user (Hall: col 8, lns 51-58, i.e. the "Ambulance officials" select accidents of a certain type of severity), further comprising displaying the symbolic representation (Hall: col 8, ln 59 to col 9, ln 15, the OCR software creates a symbolic representation of the license plate of a vehicle involved in the incident and displays it to the DMV).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined teachings of Borghesi to include these

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limitations, as taught by Hall, with the motivation of providing documentation to help assess liability (Hall; col 5, lns 15-17) for claim settlement.

Note: For the remaining claim rejections, the motivation to combine the teachings of Borghesi, Jernberg and Hall is the same as provided here for claim 772, and is to be considered incorporated therein.

B. As per claim 773, Borghesi and Jernberg fail to disclose the method of claim 772, however this feature is taught by Hall who teaches

wherein the accident type is selected from the group consisting of

a rear ender (Hall: col 20, lns 54-59),

a left turn crossing traffic,

a left turn across traffic,

a left turn entering traffic,

a right turn entering traffic,

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dual turns to same lane,

concurrent left turns,

a U-turn,

a parked vehicle merging into traffic from right,

a parked vehicle merging into traffic from left,

a merge from left, a merge from right,

concurrent merges to a single lane,

a collision with a parked vehicle,

a collision while backing,

a head on,

and

a straight cross traffic collision.

a roadway configuration (Hall: col 7, lns 52-58).

C. As per claim 774 Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

method of claim 753, wherein the assessment of the vehicle accident comprises

a symbolic representation of a roadway configuration at a location of the vehicle accident, wherein the roadway configuration is selected by a user, further comprising displaying the symbolic representation (Hall: col 7, lns 21-58, i.e. a user selects an intersection roadway configuration to implement the system, and the sensors set up to monitor the intersection form a type of symbolic representation of the intersection constructed from the signals from the sensors. This representation is displayed to "designated authorities.").

D. As per claim 775, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 774, wherein the roadway configuration is selected from the group consisting of

a two or more lane road,

a divided road with a median that can be crossed,

a four-way intersection,

a T-angle intersection,

a merging of one roadway into another (Hall: col 19, Ins 8-16; Fig 19),

a curve,

a parking lot with two-way traffic,

a parking lot with one way traffic,

a center turn lane,

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and

a two or more lane road divided by a physical barrier.

E. As per claim 780, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

environmental conditions at a location of the vehicle accident (Hall: col 2, ln 66 to col 3, ln 9).

F. As per claim 782, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

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a condition of a driver of the at least one vehicle involved in the vehicle accident (Hall: col 3, lns 21-37, reads on "...hurried and distracted motorists...").

G. As per claim 783 Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 782, wherein the condition of the driver comprises

an effect of alcohol,

illicit drugs,

prescription drugs,

driver inattention (Hall: col 3, lns 21-37, reads on "...hurried and distracted motorists..."),

corrective lenses,

driver inexperience,

driver fatigue,

or

driver illness.

H. As per claim 784, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises human actions (Hall: col 2, ln 66 to col 3, ln 21).

I. As per claim 785, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 784, wherein the human actions comprise

following too closely,

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driving with headlights off,

driving at an unsafe speed (Hall: col 2, ln 66 to col 3, ln 21),

a sudden stop or swerve,

a failure to take evasive action,

driving with high beams on,

an improper lane change,

improper parking,

or

improper signaling.

J. As per claim 788, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

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the method of claim 753, wherein the assessment of the vehicle accident comprises

a speed limit at a location of the vehicle accident (Hall: col 2, ln 66 to col 3, ln 21).

K. As per claim 789, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

a speed of the at least one vehicle involved in the vehicle accident (Hall: col 2, ln 66 to col 3, ln 21).

L. As per claim 790, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

identification of traffic controls at a location of the vehicle accident (Hall: col 7, Ins 49-58).

M. As per claim 791, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 790, wherein the traffic control is selected from the group consisting of

a red light (Hall: col 7, Ins 49-58),

a yellow light,

a green light,

a left turn arrow,

a right turn arrow,

a stop sign,

a yield sign,

a flashing red light,

a flashing yellow light,

a police officer signaling stop,

a police officer signaling proceed,

a crossing guard signaling proceed,

a crossing guard signaling stop,

a flagger signaling proceed,

a flagger signaling stop,

another person signaling proceed,

another person signaling stop,

an emergency vehicle,

and

a school bus.

N. As per claim 792 Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

a determination of whether traffic control devices were obeyed by the at least one vehicle involved in the vehicle accident (Hall: col 7, lns 49-58).

O. As per claim 793, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

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the method of claim 753, wherein the assessment of the vehicle accident comprises

a determination of whether traffic controls were defective at a location of the vehicle accident (Hall: col 13, lns 25-37).

P. As per claim 795, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

a determination of whether roadway debris was present at a location of the vehicle accident (Hall: col 22, lns 2-27, reads on "...deactivation of Vehicle Restrictors...").

Q. As per claim 796 Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

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the method of claim 753, wherein the assessment of the vehicle accident comprises

a determination of whether roadway defects were present at a location of the vehicle accident (Hall: col 22, Ins 2-27, reads on "...deactivation of Vehicle Restrictors...").

R. As per claim 799, Borghesi and Jernberg fail to disclose the features of the claim, however, these features are well known in the art as evidenced by the teachings of Hall who discloses

the method of claim 753, wherein the assessment of the vehicle accident comprises

a determination of whether occupants in the at least one vehicle involved in the vehicle accident were wearing seatbelts (Hall: col 7, Ins 16-20, reads on "...integrates...to the standard safety systems...").

S. As per claim 845 Borghesi and Jernberg fail to disclose the method of claim 753, further comprising

selecting

a roadway configuration corresponding to the vehicle accident (Hall: col 20, Ins 55-61)

and

an accident type corresponding to the vehicle (accident, see section 112 rejection above) type (Hall: col 20, In 55 to col 21, In 63),

wherein the combination of the roadway configuration and the accident type are associated with a plurality of pairs of impact points (Hall: col 21, Ins 53-63, i.e. the pairs of impact points are the front-end and back-end of the respective colliding cars in rear-end collisions).

T. As per claim 846, Borghesi discloses the method of claim 845, wherein

the proportion of liability of the insured party is based on a liability corresponding to one of the pairs of impact points (Borghesi: col 13, 15-20, i.e. the liability for the one of the repairs will depend on the cost of the impacted part, and a more expensive part will represent a higher proportion of liability.).

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U. As per claim 847, the step displaying a roadway configuration and accident type are taught by Borghesi in the rejection of claim 845 above and apply to claim 847.

Borghesi further teaches

receiving a selection by a user of combinations for the vehicle accident being assessed (Borghesi: col 12, lns 14-36, i.e. combinations of damaged parts)

wherein the assessment of liability for the accident is based on the selected combination (Borghesi: col 12, lns 37-38, assessment of liability reads on "estimate" and the combination of parts is used to determine the estimate).

Borghesi (and Jernberg) fails to teach the remaining features which are taught by Hall, who discloses

displaying a plurality of combinations of

a roadway configuration (Hall: col 20, lns 55-61)

and

an accident type (Hall: col 20, ln 55 to col 21, ln 63).

V. As per claim 851, Borghesi discloses substantially all of the features of the claim, as shown in the rejection of claim 850. Furthermore, Borghesi suggests the display of a plurality of vehicles (Borghesi: col 6, Ins 20-23), a plurality of claim datafiles (Borghesi: col 7) which include representations of impacted parts (Borghesi: col 6, Ins 52-56).

Borghesi (and Jernberg) fails to explicitly disclose a representation of at least two vehicles, however, this feature is taught by Hall who discloses sending and displaying a photographic image to authorities (Hall: col 21, Ins 52-56) of an at-least two vehicle collision (Hall: Fig 11, col 20 ln 55 to col 21, ln 63).

7. Claim 848 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borghesi in view of Jernberg and Hall as applied to claim 847, and further in view of Official Notice.

A. As per claim 848, the combined teachings of Borghesi, Jernberg, and Hall fail to explicitly teach this feature, however it is well known in the art as taught by the Examiner's taking of Official Notice, which teaches

the method of claim 847, wherein the display of the plurality of combinations of roadway configurations and accident types comprises

one or more indicators that one or more of the combinations is implausible (The Examiner takes Official Notice that indicators of implausible combinations are well known in the art. For instance many computer programs, such as spreadsheet programs, will give an error message if an attempt is made to divide a number or variable by zero.).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include indicators of implausible combinations within the teachings of Borghesi, Jernberg, and Hall with the motivation of not allowing a user to proceed with a process which might provide a dysfunctional result if the combination is allowed to be incorporated.

#### **(10) Response to Argument**

In the Appeal Brief filed May 21, 2007, Appellant makes the following arguments:

#### **VII. Argument**

##### **First Ground of Rejection**

Claims	753
	800
	801
	756
	758

765

767

769

776

794

849

**Second Ground of Rejection**

Claims 795

796

799

847

**First Ground of Rejection**

**Claim 753**

Regarding independent claim 753, Appellant essentially makes two arguments. The first argument, on pages 7-8 of Appellant's Appeal Brief, is that the combined teachings of Borghesi fails to teach the feature of

providing an assessment of the vehicle accident via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident

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Appellant states that, "Jernberg does not teach or suggest an assessment of vehicle accident including a proportion of liability for a person involved in the vehicle accident," as the essential aspect of the current invention not taught by the prior art. The Examiner respectfully disagrees.

First, Appellant must note it is the combination of the Borghesi and Jernberg references that teaches the feature in question rather than just Jernberg in isolation. In particular, Borghesi teaches assessment of vehicular accidents, as referenced in the rejection presented above in a previous section of this response, as well as in the Final Office Action (Borghesi: col 4, ln 64 to col 5, ln 25). Jernberg clearly teaches assessing the proportion of the total liability in an accident to be allocated to a particular insured party involved in the accident (Jernberg: col 3, lns 63-65, and recited in the Appeal Brief on page 7).

Additionally, Appellant recites "liability for a person" in the passage above as not being taught by the prior art. The Examiner notes that the claim language does not recite a "person," but rather refers to an insured "party" which is clearly taught by Jernberg (Jernberg: col 3, lns 63-65, read on by the acronym "PRP" which stands for potential responsible parties, see abstract.).

Appellant second argument on pages 8-10 of the Appeal Brief is essentially that there is no motivation to combine the teachings of Borghesi and Jernberg.

On page 9 for instance, Appellant appears to argue that because Borghesi and Jernberg are directed to somewhat different aspects of the insurance field, they are non-analogous art. In response, it has been held that a prior art reference must either

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be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Examiner maintains that both prior art references are in the insurance field, and more particularly, are involved in the assessment of accidents. Borghesi is directed to assessment, valuation, and claim processing of a vehicle accident. Jernberg is directed to assessment of proportionately allocating liability in a multi-party accident. The Examiner notes that many vehicle accidents involve multiple parties, and the algorithms taught by Jernberg would be found useful to one of ordinary skill in the art to assist in settling a multi-party automobile accident claim, i.e., in combination with a system such as the one taught by Borghesi.

Claims 800, 801, 756, 758, and 769

For claims 800, 801, 756, 758, and 769, Appellant relies on the arguments made for claim 753 as support for these claims. Beyond these statements made regarding claim 752, Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Claim 765

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In Borghesi: col 4, Ins 52-55, the Examiner considers "...statements from those at the scene..." to include police. It is well known that police must subsequently file reports from the scene of an accident.

#### Claim 767

In Borghesi: col 4, Ins 47-50, the Examiner considers "...necessary information for field processing of insurance claims," and "...administrative information that details the loss involved...". The Examiner notes that the location, i.e. jurisdiction, of the accident is an inherent part of the information cited.

#### Claim 776

The Examiner has cited Borghesi: col 13, Ins 15-20 for the "proportion of liability" feature. It is noted that damage done to a car by an insured is a type of liability of the insured (as would injury caused to another person in the accident, for instance). The passage is quantifying this damage, i.e. liability. The liability is being assessed in the passage by selecting a damaged part, or claimed "impact point." The cost of this part is a proportion of the total liability, which is also calculated in the passage, and referred to as total valuation. Appellant refers to the specification, apparently in an attempt to otherwise define "liability," but the Examiner notes that the language of the specification uses terms such as "generally" and "may" indicating that the associated definitions are mere examples, and not strict definitions. The Examiner submits that the prior art

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presents alternative examples as well and are read on by the claim language as described herein.

Claim 794

The Examiner notes that in Borghesi: col 5, Ins 8-11, the phrase "prior damage" refers to determining that the vehicle in the accident was defective.

Claim 849

The Examiner notes that the cited passage, Jernberg: col 4, Ins 5-11, refers to a "expected outcome," or "normal value," and "deviations" from it. The normal value is a type of base liability, and the statistical deviations represent upper and lower ranges thereof.

**Second Ground of Rejection**

Claim 795

In response to the assertion that Hall does not teach the claimed feature, the Examiner notes that Hall: col 6, ln 46 to col 7, ln 32 teaches that , "Additional sensors monitor parameters that indicate the environmental conditions that make the potential for collisions more likely..."; and further teaches "The type of sensors used...will depend on the object that is to be monitored..."; and yet further teaches that "Examples of monitoring devices are cameras..." The Examiner considers that one of ordinary skill in the art at the time of the invention would have adapted the teachings of using cameras

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as monitors of the environmental conditions of a roadway in a way such that it would have been read on by the claimed feature of determining "whether roadway debris was present at a location of the vehicle accident."

Furthermore, as recited in the Final Office Action under appeal, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Borghesi to include the teachings of Hall, with the motivation of providing documentation to help assess liability by an insurance company (Hall: col 5, lns 15-20).

#### Claim 796

In response to the assertion that Hall does not teach the claimed feature, the Examiner notes that Hall: col 6, ln 46 to col 7, ln 32 teaches that , "Additional sensors monitor parameters that indicate the environmental conditions that make the potential for collisions more likely..."; and further teaches "The type of sensors used...will depend on the object that is to be monitored..."; and yet further teaches that "Examples of monitoring devices are cameras..." The Examiner considers that one of ordinary skill in the art at the time of the invention would have adapted the teachings of using cameras as monitors of the environmental conditions of a roadway in a way such that it would have been read on by the claimed feature of determining "whether roadway defects were present at a location of the vehicle accident."

Furthermore, as recited in the Final Office Action under appeal, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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modify the teachings of Borghesi to include the teachings of Hall, with the motivation of providing documentation to help assess liability by an insurance company (Hall: col 5, Ins 15-20).

Claim 799

In response to the assertion that Hall does not teach the claimed feature, the Examiner notes that Hall: col 6, ln 46 to col 7, ln 32 teaches that , "Additional sensors monitor parameters that indicate the environmental conditions that make the potential for collisions more likely..."; and further teaches "The type of sensors used...will depend on the object that is to be monitored..."; and yet further teaches that "Examples of monitoring devices are cameras...positioned to capture the image of...[a plurality of physical features attendant to the vehicle, possibly including the state of passengers with respect to their seatbelts]." The Examiner considers that one of ordinary skill in the art at the time of the invention would have adapted the teachings of using cameras as monitors of the environmental conditions of a roadway and vehicles in the roadway in a way such that it would have been read on by the claimed feature of determining "whether occupants in the at least one vehicle involved in the vehicle accident were wearing seatbelts."

Furthermore, as recited in the Final Office Action under appeal, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Borghesi to include the teachings of Hall, with the motivation of

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providing documentation to help assess liability by an insurance company (Hall: col 5, Ins 15-20).

### Claim 847

Regarding Appellant's argument that the claim's features are not taught by the combined teaching of Borghesi and Hall, the Examiner notes that Borghesi teaches the user, from a display of parts, selecting a combination of them to assess liability (Borghesi: col 12, Ins 14-38). Hall teaches monitoring roadway configurations (Hall: col 19, Ins 8-67) and an accident type (Hall: col 20, Ins 55-61 to col 21, Ins 63). One of ordinary skill in the art at the time of the invention would have been able to modify Borghesi to incorporate the teachings of Hall to include display of these features to further assist assessment of liability (Hall: col 5, Ins 15-20).

### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

### ***Conclusion***

Appellant's arguments at pages 6-19 of the Appeal brief filed 21 May 2007 do not appear to persuasively require a withdrawal of the examiner's grounds of rejection. As

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specified in the remarks and rebuttals given above, Appellant's arguments apparently fail to appreciate the clear and unmistakable suggestions provided in the prior art of record, and relied upon by the Examiner for motivation to combine such well-known elements of the prior art. As such, its respectfully submitted that an explanation based on logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner both the present Examiner's Answer as well as the previous Office Action, *Ex parte Levengood*, 28 USPQ2d 1300 (bd. Pat. App. & Inter., 44/22/93).

Respectfully submitted,

/M. A. G./  
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